PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

H2

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: APR 01 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on October 25, 1998 in California. The Petition for Alien Relative filed on behalf of the applicant by her U.S. citizen spouse was denied on April 28, 2003 after it was determined that the applicant and her spouse were legally divorced on June 21, 2001. On February 17, 2001, the applicant married a second naturalized citizen of the United States. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her current spouse. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her husband.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated April 28, 2003.

On appeal, counsel contends that the Department of Homeland Security [Citizenship and Immigration Services (CIS)] erred and abused its discretion in denying the applicant's waiver application. Counsel asserts that the Department [CIS] failed to give proper weight to the evidence presented and to the totality of the circumstances in the application. *See* Form I-290B, dated May 5, 2003.

The record contains a declaration of the applicant's spouse, undated; a declaration of the applicant, dated April 19, 2002; copies of medical records for the applicant and her husband; verification of employment for the applicant and the applicant's spouse; a copy of the naturalization certificate of the applicant's spouse; a copy of the marriage license and certificate for the couple; verification that the applicant and her spouse are actively seeking a home to purchase; a copy of a country condition report for Peru; a copy and translation of the Peruvian birth certificate of the applicant and copies of financial and tax documents for the couple. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such

> immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured entry into the United States on or about May 15, 1994, with a visitor visa that she obtained by falsely representing her first name and date of birth to a consular officer.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's husband would face extreme hardship if he relocated to Peru in order to remain with the applicant. Counsel contends that leaving the United States would deprive the applicant's husband of his lucrative job and desire to purchase a home. Further, life in Peru would subject the applicant's husband to continuous civil unrest and political and economic uncertainty. *See* Brief in Support of Administrative Appeal. Counsel further states that while separation of the family is not normally enough to support a finding of extreme hardship,

> in this particular case, of a United State [sic] Citizen form [sic] one country to be faced with the dilemma of relocating to a third foreign country is not just a [sic] the 'normal hardship' but an equitable factor which raises [sic] to the level of extreme hardship to the United State [sic] Citizen spouse of the appellant.

Id. The AAO finds this argument unpersuasive, as counsel cites no case law to support the assertion that relocation to a foreign country is a greater hardship for a naturalized U.S. citizen spouse of an inadmissible applicant than it would be for a natural born U.S. citizen spouse of an inadmissible applicant.

Counsel does not establish extreme hardship to the applicant's husband if he remains in the United States in order to maintain his employment benefits and enjoy the political and social stability of American society. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that he will undergo financial hardship as a result of maintaining two households if he is separated from the applicant. He indicates that the applicant earns more money than he does. *See* Declaration of [redacted] undated. The record establishes that the applicant earns $10.50 per hour while the applicant's

spouse earns $10.00 per hour. *See* Letter from [redacted] of ProTech Security Services, Inc., dated March 19, 2002 and Letter from [redacted] of Flextronics, dated March 15, 2002. This documentation demonstrates that the applicant and the applicant's spouse earn approximately the same wage. The record does not establish that the applicant's spouse was unable to support himself financially prior to his marriage to the applicant. Further, the record does not demonstrate that the applicant cannot support herself financially while residing outside of the country. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel contends that the applicant suffers from infertility and medical treatment is not available or is prohibitively expensive in Peru. *See* Brief in Support of Administrative Appeal. Counsel reasons that separation would deny the couple of having a child. *Id.* The AAO sympathizes with the plight of the applicant and her husband, but notes that if the applicant remains in the United States, there is no assurance that medical technology will enable the applicant to conceive and deliver a child. Further, the introduction of a child into the applicant's family would not in itself warrant a grant of the applicant's waiver request.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.